

FIRST AMERICAN TITLE INSURANCE COMPANY

**114 East Fifth Street
Santa Ana, California 92701**

EXAMINATION LOCATION

**602 Park Point Drive
Golden, Colorado, 80401**

NAIC COMPANY CODE 50814

MARKET CONDUCT EXAMINATION REPORT

as of December 31, 2002

**PREPARED BY INDEPENDENT CONTRACTORS FOR THE
COLORADO DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF INSURANCE**

**FIRST AMERICAN TITLE INSURANCE COMPANY
602 Park Point Drive
Golden, Colorado 80401**

**MARKET CONDUCT
EXAMINATION REPORT
as of
December 31, 2002**

Prepared by

James T. Axman, CIE

Frederick T. Verny Jr., AIE

Independent Contract Examiners

January 9, 2004

The Honorable Doug Dean
Commissioner of Insurance
State of Colorado
1560 Broadway Suite 850
Denver, Colorado 80202

Commissioner Dean:

In accordance with §§ 10-1-203 and 10-3-1106, C.R.S., a limited examination of selected underwriting, rating, and claims practices of First American Title Insurance Company, has been conducted. The Company's records were examined at its state office, located at 602 Park Point Drive, Golden, Colorado, 80401.

The examination covered a one-year period from January 1, 2002 to December 31, 2002.

A report of the examination of First American Title Insurance Company is, herewith, respectfully submitted.

James T. Axman, CIE

Frederick T. Verny Jr., AIE

Independent Market Conduct Examiners

**MARKET CONDUCT
EXAMINATION REPORT
OF THE
FIRST AMERICAN TITLE INSURANCE COMPANY**

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COMPANY PROFILE

First American Title Insurance Company (the “Company”), a wholly owned subsidiary of the First American Financial Corporation (the “Parent”), is licensed to conduct title insurance business in 47 states and the District of Columbia. The Company is also licensed to conduct title insurance business in Australia, the Bahama Islands, Bermuda, Canada, Guam, Ireland, Mexico, Puerto Rico, the United Kingdom, and the U.S. Virgin Islands. The Company is currently authorized to write title insurance coverage in Colorado and was first licensed in this state on February 18, 1971.

The Company is the anchor of a diversified enterprise of companies providing real estate related financial and information services. Among other products and service, the First American companies provide title insurance, equity loan services, mortgage, consumer and business credit reporting, property data reporting, title plant database products, property appraisal services, document preparation, loan origination software systems, and homebuyer warranties.

*As of the calendar year 2002 the Company had reported premium in Colorado of \$98,482,000 for title insurance, representing a 28.60 % market share in Colorado.

*Data as reported in the Colorado Insurance Industry Statistical report.

PURPOSE AND SCOPE OF EXAMINATION

This market conduct report was prepared by independent examiners contracting with the Colorado Division of Insurance for the purpose of auditing certain business practices of insurers licensed to conduct the business of insurance in the State of Colorado. This procedure is in accordance with Colorado Insurance Law §10-1-204, C.R.S., which empowers the Commissioner to supplement his resources to conduct market conduct examinations. The findings in this report, including all work product developed in the production of this report, are the sole property of the Colorado Division of Insurance.

The purpose of the limited examination was to determine the Company's compliance with Colorado insurance law and with generally accepted operating principles related to title insurance law. Examination information contained in this report should serve only these purposes. The conclusions and findings of this examination are public record. The preceding statements are not intended to limit or restrict the distribution of this report.

This examination was governed by, and performed in accordance with, procedures developed by the National Association of Insurance Commissioners and the Colorado Division of Insurance. In reviewing material for this report the examiners relied primarily on records and material maintained by the Company. The examination covered a twelve (12) month period of the Company's operations, from January 1, 2002 to December 31, 2002.

File sampling was based on a review of underwriting and claims files that were systematically selected by using (ACL TM) software and computer data files provided by the company. Sample sizes were chosen based on procedures developed by the National Association of Insurance Commissioners. Upon review of each file any concerns or discrepancies were noted on comment forms and delivered to the Company for review. Once the Company was advised of a finding contained in a comment form, the Company had the opportunity to respond. For each finding the Company was requested to agree, disagree or otherwise justify the Company's noted action. At the conclusion of each sample the Company was provided a summary of the findings for that sample. The examination report is a report by exception. Therefore, much of the material reviewed is not addressed in this written report. Reference to any practices, procedures, or files, which manifested no improprieties, was omitted.

An error tolerance level of plus or minus ten dollars (\$10.00) was allowed in most cases where monetary values were involved. However, in cases where monetary values were generated by computer or other systemic methodology, a zero (\$0) tolerance level was applied in order to identify possible system errors. Additionally, a zero (\$0) tolerance level was applied in instances where there appeared to be a consistent pattern of deviation from the Company's established policies, procedures, rules and/or guidelines.

When sampling was involved, a minimum error tolerance level of five percent (5%) was established to determine reportable exceptions. However, if an issue appeared to be systemic, or when due to the sampling process it was not feasible to establish an exception percentage, a minimum error tolerance percentage was not utilized. Also, if more than one sample was reviewed in a particular area of the examination (e.g. timeliness of claims payment), and if one or more of the samples yielded an exception rate of five percent (5%) or more, the results of any other samples with exception percentages less than five percent (5%) were also included.

The limited examination included review of the following:

1. Company Operations
2. Sales and Marketing
3. Underwriting-Rating
4. Claims Practices

Certain unacceptable or non-complying practices may not have been discovered in the course of this examination. Additionally, findings may not be material to all areas that would serve to assist the Commissioner. Failure to identify or criticize specific Company practices does not constitute acceptance by the Colorado Division of Insurance. Examination findings may result in administrative action by the Division of Insurance.

EXAMINERS' METHODOLOGY

The examiners reviewed the Company's title insurance Sales & Marketing, Underwriting-Rating, and Claims practices to determine compliance with the Colorado insurance law as outlined in Exhibit 1.

Exhibit 1

Law	Subject
Section 10-1-127	Fraudulent insurance acts
Section 10-4-404.5	Rating plans-P&C type II insurers-rules and regulations
Section 10-3-1104	Unfair methods of competition and unfair or deceptive acts or practices
Section 10-11-101.	Short title.
Section 10-11-102.	Definitions.
Section 10-11-103.	Compliance with article required.
Section 10-11-104.	Corporate form required.
Section 10-11-105.	Financial requirements prior to the article.
Section 10-11-106.	Determination of insurability required.
Section 10-11-107.	Powers.
Section 10-11-108.	Prohibitions.
Section 10-11-109.	Unearned premium reserve.
Section 10-11-110.	Amount of unearned premium reserve-release.
Section 10-11-111.	Reserve for unpaid losses and loss expense.
Section 10-11-112.	Net retained liability.
Section 10-11-113.	Power to reinsure.
Section 10-11-114.	Legal investments and admitted assets.
Section 10-11-115.	Prior investments.
Section 10-11-116.	Title insurance agents licensed.
Section 10-11-117.	Title insurance agents-certain names prohibited.
Section 10-11-118.	Title insurance.
Section 10-11-119.	Laws applicable.
Section 10-11-120.	Corporate existence preserved.
Section 10-11-121.	Application of article-other laws applicable.
Section 10-11-122.	Title commitments.
Section 10-11-123.	Notification of severed mineral estates.
Amended Regulation 3-5-1	Title Insurance
Regulation 1-1-7	Market Conduct Record Retention
Regulation 5-1-10	Rate and Rule filing regulation

Contract Forms and Endorsements

The following title insurance forms and endorsements were reviewed for compliance applicable to the period under examination:

Title	Form
Restrictions, etc. 1-4 Family Dwellings non-residential	100
ALTA Endorsement Environmental Protection Plan	8.1
ALTA Condominium Endorsement	115.1 (ALTA 4)
ALTA Planned unit development	115.2 (ALTA 5)
Designation of improvements, an location	116
Mineral Rights, Damage to Improvements	100.29
Mineral Rights, Damage to Improvements – Lender only	100.30
Mineral Rights, Damage to Improvements -- Owners only	100.31
Mechanic/Lien protection up to insured Trust Deed	101.5
Variable rate mortgage	110.7 (ALTA 6)
Comprehensive Encroachments, Minerals	Alta 9
Residential Extra Protection	130
ALTA Plain Language Commitment	Form #1344-A & B
ALTA Loan Policy Jacket (92 Ed)	Form #1056.92
ALTA Owners Policy Jacket (92 Ed)	Form #1402.92

Sales and Marketing

The Company did not do any advertising or promotions as a title insurer/underwriter, for the period under examination, and therefore did not provide any materials to be reviewed.

Underwriting-Rating

The examiners reviewed the rate and fee filings for title premium, submitted to Colorado Division of Insurance for the period under examination. This information was then compared against a sample of title policies, rated by county, type and amount of loan, and endorsements and fees, to determine compliance with Company filings during the period under examination.

Population	Sample Size	Percentage to Population
123,055	100	1%

Claims Practices

For the period under examination, a random sample was selected to determine compliance with claims handling practices.

Population	Sample Size	Percentage to Population
727	50	6.9 %

EXAMINATION REPORT SUMMARY

The examination resulted in three (3) issues arising from the Company's apparent failure to comply with the Colorado insurance law that governs all title insurance companies operating in Colorado. These issues involved the following categories:

Company Operations:

In the area of Company Operations, one (1) compliance issue is addressed in the report. Issues arise from Colorado insurance law requirements dealing with the display of the anti-fraud statement.

- Failure to display an anti-fraud statement as required by Colorado insurance law.

It is recommended that the Company review its Company Operations procedures and make necessary changes to ensure future compliance with statutes and regulations applicable to the issue addressed.

Underwriting-Rating:

In the area of Rating, one (1) compliance issue is addressed in this report. Issues arise from Colorado insurance law requirements dealing with the rating and calculating of title insurance policy premium and closing fees. The issue in this phase is identified as follows:

- Failure, in some cases, to correctly rate title policy premiums using filed rates.

It is recommended that the Company review its underwriting and rating and procedures and make necessary changes to ensure future compliance with statute and regulations applicable to the issue addressed.

Claim Practices:

In the area of claim practices, one (1) compliance issue is addressed in this report. Issues arise from Colorado insurance law requirements dealing with the fair and equitable settlement of claims, handling practices, documentation, investigation, denials, and the timeliness of claim payments. The issue in this phase is identified as follows:

- Failure, in some cases, to promptly acknowledge title claims.

It is recommended that the Company review its claim handling practices and make necessary changes to ensure future compliance with the Colorado insurance law applicable to the issue addressed.

A copy of the Company's response, if applicable, can be obtained by contacting the Company or the Colorado Division of Insurance.

Results of previous Market Conduct Exams are available on the Colorado Division of Insurance's website at www.dora.state.co.us/insurance or by contacting the Colorado Division of Insurance.

FIRST AMERICAN TITLE INSURANCE CORPORATION

PERTINENT FACTUAL FINDINGS

PERTINENT FACTUAL FINDINGS

COMPANY OPERATIONS

Issue A: Failure to display an anti-fraud statement as required by Colorado insurance law.

Section 10-1-102, C.R.S., Definitions, states, in part.

As used in this title, unless the context otherwise requires:

(12) "Insurance" means a contract whereby one, for consideration, undertakes to indemnify another or to pay a specified or ascertainable amount or benefit upon determinable risk contingencies, and includes annuities.

Section 10-11-102, C.R.S., Definitions, states, in part:

(8) "Title insurance" means insuring, guaranteeing, or indemnifying owners of real property or others interested therein against loss or damage suffered by reason of liens or encumbrances upon, defects in, or the unmarketability of the title to said property.

Section 10-1-127, C.R.S., Fraudulent insurance acts - immunity for furnishing information relating to suspected fraud - legislative declaration, states, in part:

(7)(a) On and after January 1, 1997, each insurance company shall provide on all printed applications for insurance, or on all insurance policies, or on all claim forms provided and required by an insurance company, or required by law, whether printed or electronically transmitted, a statement, in conspicuous nature, permanently affixed to the application, insurance policy, or claim form substantially the same as the following:

"It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance, and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to the policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado division of insurance within the department of regulatory agencies."

(b) This subsection (7) shall not apply to reinsurance contracts, reinsurance agreements, or reinsurance claims transactions.

The Company did not utilize a disclosure statement of antifraud on its title policy, application or claim form, as required by the Colorado insurance law.

The Company, licensed in Colorado, sells a title product and services, and falls under the definition of insurance, whereby it offers a policy that indemnifies another, and therefore is subject to the provisions of Colorado insurance law. Although title insurance differs from other lines of insurance in its method of issuing policies and verifying claims of title to property prior to issuing policies, it is nonetheless considered vulnerable to fraudulent acts.

Recommendation #1:

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Sections 10-1-127, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed its procedures related to the disclosure of the anti-fraud statement in order to ensure compliance with Colorado insurance law.

PERTINENT FACTUAL FINDINGS

UNDERWRITING - RATING

Issue B: Failure, in some cases, to use filed rates.

Section 10-3-1104, C.R.S., Unfair methods of competition and unfair or deceptive acts or practices, states, in part:

(1) The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(f)(II) Making or permitting any unfair discrimination between individuals of the same class or between neighborhoods within a municipality and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of insurance, or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever;

Section 10-4-404.5, C.R.S., Rating plans - property and casualty type II insurers - rules and regulations states, in part:

The commissioner may promulgate rules and regulations for type II insurers which establish reasonable standards for rating plans, including experience rating plans, schedule rating plans, and expense reduction plans, and which are designed to modify rates in the development of premiums for individuals risks insured in the property and casualty insurance market. Such rules and regulations may permit recognition of expected differences in loss and expense characteristics and shall be designed so that such plans are reasonable and equitable in their application and are not unfairly discriminatory. Such rules and regulations shall not prevent the development of new rating methods which would otherwise comply with this part 4. The rules and regulations may establish maximum charges against and credits to the experience rating of an insured that may result from the application of a rating plan. The rules and regulations may encourage the use of loss control programs, safety programs, and other methods of risk management and may require insurers to maintain documentation of the basis for the charges and credits applied under any plan. The rules and regulations may also require the rating plans to include merit rating to the extent feasible.

Colorado Amended Regulation 3-5-1, Title Insurance, promulgated under the authority of 10-1-109, 10-3-1110, and 10-4-404(1), C.R.S., states, in part:

Section 5. Rules Regarding Standards Of Conduct For Title Insurance Entities

9. Charging less than the scheduled rate or fee for a specified title or closing and settlement service, or for a policy of title insurance.

Colorado Regulation 5-1-10, Rate and Rule Filing Regulation as promulgated under the authority of 10-1-109, 10-4-401 and 10-4-404, states, in part:

B. RATE AND RULE FILING REQUIREMENTS.

1. Every property and casualty insurer, including workers' compensation and title insurers, are required to file insurance rates, minimum premiums, schedule of rates, rating plans, dividend plans, individual risk modification plans, deductible plans, rating classifications, territories, rating rules, rate manuals and every modification of any of the foregoing which it proposes to use. Such filings must state the proposed effective date thereof, and indicate the character and extent of the coverage contemplated.

The following chart illustrates the significance of error versus the population and sample examined:

Title insurance policies

Population	Sample Size	Number of Exceptions	Percentage to Sample
123,055	100	22	22%

An examination of 100 title policies and closing settlement statements, representing approximately .08% of those policies written by its agents during the examination period, showed twenty-two (22) exceptions (or 22% of the sample) wherein the Company failed to correctly rate title policy premiums as required by Colorado insurance law.

It was noted during the review of title policy premium rating, that the majority of instances of error resulted from independent agents using rates of other insurers.

Recommendation #2:

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Sections 10-3-1104 and 10-4-404.5, C.R.S. and amended Regulation 3-5-1. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed its procedures related to the accuracy of title commitment premiums and implemented necessary changes in order to ensure compliance with Colorado insurance law.

PERTINENT FACTUAL FINDINGS

CLAIMS PRACTICES

Issue C: Failure, in some cases, to promptly acknowledge title claims.

Section 10-3-1104, C.R.S., Unfair methods of competition and unfair or deceptive acts or practices, provides, in part:

(1) The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(h) Unfair claim settlement practices: Committing or performing, either in willful violation of this part 11 or with such frequency as to indicate a tendency to engage in a general business practice, any of the following:

(II) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;

The following chart illustrates the significance of error versus the population and sample examined:

Title insurance claims

Population	Sample Size	Number of Exceptions	Percentage to Sample
727	50	6	12%

An examination of fifty (50) claims representing approximately 6.9% of those claims received by the Company during the examination period showed six (6) exceptions (or 12% of the sample) wherein the Company failed to provide a prompt acknowledgement to claims as required by Colorado insurance law. The time frames ranged from thirty-one (31) calendar days to sixty-nine (69) calendar days.

Recommendation #3:

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Sections 10-3-1104, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed its claims handling practices regarding prompt acknowledgement of a claim and implemented necessary changes in order to ensure compliance with Colorado insurance law.

SUMMARY OF RECOMMENDATIONS**FIRST AMERICAN TITLE INSURANCE CORPORATION**

<u>ISSUE</u>	<u>REC NUMBER</u>	<u>PAGE NUMBER</u>
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Issue A: Failure to display an anti-fraud statement as required by Colorado insurance law.	1	15
Underwriting-Rating		
Issue B: Failure, in some cases, to correctly rate title policy premiums using filed rates.	2	18
Claims Practices		
Issue C: Failure, in some cases, to promptly acknowledge title claims.	3	20

Independent Market Conduct Examiners

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Participated in this examination and in the preparation of this report